



**Submission to the Senate Inquiry on the
Customs Amendment (Comprehensive
and Progressive Agreement for Trans-
Pacific Partnership Implementation) Bill
2018 [Provisions], Customs Tariff
Amendment (Comprehensive
Agreement for Trans-Pacific
Implementation) Bill 2018 [Provisions]**

SEPTEMBER 2018

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1 PRELIMINARY SUMMARY

1. The ETU maintains its opposition to both the way in which the Government is negotiating Australia's trade deals and the content of those agreements, which continue to fall well below the community's expectation for Government to protect Australian jobs, skills, industries and sovereignty.
2. The ETU supports Australian Fair Trade and Investment Networks submission to this review and supports all recommendations reasoned in that submission.
3. The TPP-11 contains harmful provisions which will act to the detriment of the Australian economy, including;
 - a. The inclusion of Investor State Dispute Settlement provisions;
 - b. The exemption from Labour Market Testing;
 - c. Absence of provisions to facilitate testing of skills equivalence of overseas workers qualifications; and
 - d. A lack of independent and transparent review of the merits of the trade deal
4. The ETU continues to call for fair trade agreements rather than free trade agreements. That is, trade agreements which adequately address:
 - a. Upholding Occupational Licencing and Mandatory Skills Testing regimes;
 - b. Labour Mobility Provisions which don't undermine local jobs;
 - c. The removal of Investor State Dispute Settlement Provisions;
 - d. Assessment of environmental impacts;
 - e. Confidence that agreements are transparently negotiated with the Australian people; and
 - f. Transparency with the Australian people on all operational aspects of trade agreements, particularly Investment Facilitation Arrangements.

2 INTRODUCTION

The Electrical Trades Union of Australia (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents over 62,000 electrical industry workers around the country and the CEPU as a whole, represents over 101,000 workers nationally, making us one of the largest trade unions in Australia.

The ETU welcomes the opportunity to make a submission to the Senate Standing Committees on Legal and Constitutional Affairs inquiry into the enabling legislation for the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP).

The TPP will have profound consequences on the countries who are signatory as well as the nearby trading partners of signatory countries. If it enters into force, the TPP will become the largest trade deal in history, covering 11 countries, 495 million people and 15 per cent of all global trade. The agreement itself contains 30 chapters, and over 6000 pages. It deals with a wide range of matters that are traditionally the preserve of national governments to determine through their own domestic, democratic parliamentary processes.

But, as has become the status quo for trade agreements Australia is involved in, the TPP has been negotiated and will commence with almost no public scrutiny and absent the usual transparent examination that should be expected in a modern western democracy.

The increase in migrant worker exploitation in Australia is skyrocketing. Today, nearly 200 Visa workers in Hobart are currently experiencing wage theft and exploitation of enormous proportion on a taxpayer funded hospital project. 200 Visa workers employed without labour market testing, without adequate testing of skills and qualifications and without adequate oversight that these workers are being employed on the same terms and conditions as Australian workers. This is the current reality of this Government's addiction to satisfying its corporate masters.

In the case of the TPP-11, Australian taxpayers are being required to forgo \$220 million over the forward estimates¹ in lost tariff revenue in exchange for trading away their jobs, skills, industries and sovereignty through this deeply deficient trade agreement.

¹ [TPP National Interest Analysis](#)

3 ANOTHER DEFICIENT TRADE DEAL

The current process of negotiating Australian trade agreements is secretive and undemocratic, with the content not made public until after the decision to sign it. The decision to sign agreements is made by Cabinet before they are tabled in Parliament and only then examined by the Joint Standing Committee on Treaties. There is no independent assessment of the economic, environmental, health and other impacts of the agreement.

Parliament has no ability to change the text of the agreement and can only vote on the implementing legislation, which only deals with immediate changes to legislation like the Customs Amendment Bills.

However, the 30 chapters of the TPP text contain many unacceptable clauses which are contained in the text but which Parliament is not permitted to vote on. These include:

- Special rights for foreign investors to sue governments over domestic laws and policies (ISDS),
- restrictions on regulation of essential services and state-owned enterprises,
- weak labour rights and environmental standards that are not fully enforceable in the same way as the rest of the agreement,
- increased numbers of vulnerable temporary migrant workers without testing if local workers are available.

We also know that some of the worst clauses on stronger monopolies for biologic medicines and copyright monopolies have only been suspended pending the US re-joining the deal, not deleted altogether.

We believe that many of these provisions would be opposed by the majority of Australians, and by Parliament, if they were subject to full democratic scrutiny, debate and voting.

The ETU continues to rely upon our submissions made during the JSCOT process.

The TPP-11 should not be implemented for the following reasons.

ISDS

The TPP-11 provisions for ISDS remain almost completely unchanged from the TPP-12. ISDS is an enormously costly system with no independent judiciary, precedents or appeals, which gives increased legal rights to global corporations which already have enormous market power, based on legal concepts not recognised in national systems and not available to domestic investors.

Most global trading parties have recognised that ISDS provisions are not in a nations sovereign interest and we are seeing that these provisions are increasingly being omitted from trade deals.

New Zealand has the sense to remove these provisions from the TPP-11 but this Australian Government does not.

Trade-in-Services

The TPP-11 trade-in-services chapter remains unchanged from the TPP-12. The structure of the chapter treats regulation of services as if it were a tariff, to be frozen at existing levels or reduced over time, and not to be increased in future, known as the “ratchet” structure. The negative list structure means that all services are included, unless specifically exempted. Exemptions are intended to be reduced over time. The exemptions do not apply to ISDS, and do not prevent ISDS cases on exempted services.

The negative list and ratchet structure are specifically intended to prevent governments from introducing new forms of regulation, which are seen as potential barriers to trade.

But this structure ignores the need for democratic governments to respond to changed circumstances, like the re-regulation of the financial sector following the Global Financial Crisis, and the need for new regulation of carbon emission levels and energy markets in response to climate change. The structure can also prevent governments from responding to failures of privatisation and deregulation, as occurred with the need to re-regulate the provision of Australian vocational education services.

Temporary movement of people

The TPP-11 commits Australia to accepting unlimited numbers of temporary workers from Canada, Mexico, Chile, Japan, Malaysia and Vietnam as contractual service providers in a wide range of professional, technical and skilled trades occupations, without labour market testing to establish whether there are local workers available. The fact that they are tied to one employer and face deportation if they lose the job means that these workers are vulnerable to exploitation. Recent case studies have demonstrated that exploitation is widespread. Australia has made far more extensive commitments for entry of contractual service providers than have other TPP countries.

Again, New Zealand has the sense to remove these provisions from the TPP-11 but this Australian Government does not.

Labour Rights

The text of the TPP-11 Labour chapter is unchanged from the TPP-12. However, there are legally binding side letters between Vietnam and other TPP-11 countries which have the effect of weakening Vietnam’s obligations in relation to the chapter.

Labour law experts have criticised the chapter because much of it is aspirational rather than legally binding. For example, the clause on forced and child labour only commits governments to “recognise the goal” of eliminating forced and child labour. The enforcement process for those few provisions which are legally binding is more qualified, lengthy and convoluted than in other chapters of the agreement. These processes have not proven effective in other agreements. The labour rights chapter is not specifically exempted from ISDS cases, and there is no reference to labour regulation in the claimed ISDS safeguards. This means that future changes to labour laws could be the subject of ISDS disputes.

Environment

Environmental law experts have criticised the chapter for its weak environmental standards, which are not enforceable in the same way as obligations in other chapters.

Despite promises that the agreement would include enforceable commitments by governments to at least seven international environment agreements, the text mentions only four, and only one - on trade in endangered species - has clearly enforceable commitments.

The text does not refer to climate change, but only to voluntary measures for lower emission economies with no benchmarks or timeframes.

The non-binding nature of commitments and weak enforceability in the environment chapter contrasts sharply with the legal rights of corporations to sue governments over domestic laws, including environmental laws, under the provisions for ISDS described above.

Technical Barriers to Trade (TBT)

The TPP-11 includes new commitments for Australia to mutually recognise product conformity assessment procedures in other TPP-11 countries. Mutual recognition of regulatory standards across countries with different standards raises the question of how to maintain and improve Australia’s relatively high standards in areas like food regulation and building product standards. Harmonising standards may not be in the public interest.

Australia introduced a form of country-of-origin food labelling after the imported infected frozen berries scandal, and more regulation may be needed in future. After numerous reports of dangerous imports of asbestos products and flammable building cladding, a Senate inquiry has recommended that stronger regulation is needed to ensure that imported building products conform to Australian standards to prevent importation of such dangerous products. Future governments may need to introduce new regulation in these areas. The commitments to recognise other countries’ conformity assessment procedures may impede future governments from regulating in these areas.

ISDS disputes are not excluded from the TBT chapter. In addition to government-to-government disputes described above, foreign investors could use ISDS to claim compensation for changes to food labelling requirements, or changes to building product conformity standards which might occur after the TPP-11 is in place. The wine and spirits annex could restrict future options for mandatory alcohol health warnings like those for pregnant women, and such regulation could also be open to ISDS cases.

Government procurement

Australian procurement policy should follow the example of trading partners like South Korea and the US in having policies with more flexibility to consider broader definitions of value for money, which recognise the value of supporting small and medium-sized local firms in government contracting decisions.

4 RECOMMENDATIONS

The ETU maintains our earlier recommendations relating to the TPP-11:

Recommendation 1

The review finds that the TPP is not in the Australian national interest and should not be continued in its current form.

Recommendation 2

Investor State Dispute Settlement clauses, or any similar arrangements, undermine Australian legal sovereignty. These arrangements and clauses should be immediately removed from the TPP, and any future trade agreement or treaty that Australia enters into.

Recommendation 3

Labour Market Testing is a critical tool for ensuring the interests of the Australian domestic workforce are protected. The TPP provisions which remove, exempt or water down Labour Market Testing requirements in Australia should be immediately stripped from the TPP and its accompanying documents.

Recommendation 4

A review must be conducted into Australia's skills assessment and licencing institutions and regulators capacity to maintain appropriate occupational skills testing of overseas workers is not compromised.

Recommendation 5

The full text of trade agreements should be required to be presented to both houses of parliament for an open debate, including aspects that do not require implementing legislation, and endorsement before being agreed to by the government.

Recommendation 6

That a full, public study of the environmental impacts of the TPP be carried out urgently, with the findings to inform the inclusion of a new chapter in the agreement that deals with environmental standards that includes commitments by governments to implement agreed international environmental standards which should be enforced by the government-to-government disputes process of the agreement.

Recommendation 7

The TPP should include commitments by governments to implement agreed international labour rights and enforced labour exclusion which should be enforced by the government-to-government disputes process of the agreement and operable from commencement of the agreements.

Recommendation 8

That a detailed social and economic impacts assessment of the TPP text and its accompanying documents should occur immediately, followed by immediate commencement of detailed stakeholder consultation (including industry, unions and civil society groups).

5 CONCLUSION

The current secret and undemocratic process our Governments are utilising to negotiate international trade deals are unacceptable to the Australian public. More and more public institutions are calling for the text of trade agreements to be released for public and parliamentary scrutiny before they are signed and when they are reviewed. These demands have grown because trade agreements now deal with issues like medicines, copyright, food regulation, labour rights and other public interest issues which should be decided through the democratic parliamentary process, not secretly signed away in trade deals.

This review process simply reinforces concerns in regard to secrecy and a lack of transparency in the review process. This review simply pretends to give civil society a voice in the review while actually continuing to lock the Australian public voice out of the debate.

Without genuine access to information like:

- The terms of the review;
- The participating Governments demands;
- The Australian Governments demands; and
- Detailed statistical data on migration.

How can the Australian public actually participate genuinely in the debate?

The complexity of bilateral and regional trade agreements and the potential for provisions to impose net costs on the community presents a compelling case for the negotiated text of an agreement to be comprehensively analysed before signing and again at each and every review.

Current processes fail to adequately assess the impacts of agreements. They do not systematically quantify the costs and benefits of agreement provisions, fail to consider the opportunity costs of pursuing preferential arrangements compared to unilateral reform, ignore the extent to which agreements actually liberalise existing markets and are silent on the need for post-agreement evaluations of actual impacts.

The questionable claims of job creation by the TPP and other agreements assumes all jobs are exchangeable – that a laid-off linesman or electrician can just slot into a newly- created banking or viticulture role.

That this agreement was kept secret through a decade of negotiations is testament to how unpopular these provisions would have been if subjected to any serious scrutiny. That the review is being conducted in essentially the same manner that the negotiations for the initial agreement were conducted reinforces the culture of secrecy.

It will take more than vague assurances of job creation and some misapplied economic theory to convince our union that the TPP in its current form can do anything but harm the working people we represent.